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11	UNITED STATES DISTRICT COURT	
12	NORTHERN DISTRICT OF CALIFORNIA	
13		
	JACOB MANDEL, CHARLES VOLK, LIAM	) Casa Na : 2:17 CV 02511 WHO
14	KERN, SHACHAR BEN-DAVID, MICHAELA	) Case No.: 3:17-CV-03511-WHO
15	GERSHON, MASHA MERKULOVA, and	) NOTICE OF MOTION AND
16	STEPHANIE ROSEKIND,	) MOTION TO STRIKE
17	Plaintiffs,	) ALLEGATIONS SECOND ) AMENDED COMPLAINT
18	V.	) AMENDED COMPLAINT
	BOARD OF TRUSTEES of the CALIFORNIA STATE UNIVERSITY, SAN FRANCISCO	) (Filed concurrently with Motion to
19	STATE UNIVERSITY, RABAB ABDULHADI,	) Dismiss and [Proposed] Order)
20	in her individual capacity, and LESLIE WONG,	) Data: July 19 2019
21	MARY ANN BEGLEY, LUOLUO HONG, LAWRENCE BIRELLO, REGINALD PARSON,	) Date: July 18, 2018 ) Time: 2:00 p.m.
22	OSVALDO DEL VALLE, KENNETH	) Location: Courtroom 2, 17 <sup>th</sup> Floor
	MONTEIRO, BRIAN STUART, and MARK	) Judge: William H. Orrick
23	JARAMILA, in their official and individual capacities,	) Original Action Filed: June 19, 2017
24		)
25	Defendants.	)
26		
27		_)
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NOTICE OF MOTION AND MOTION TO STRIKE ALLEGATIONS OF SECOND AMENDED COMPLAINT

Case No. 3:17-CV-03511-WHO

1 NOTICE OF MOTION AND MOTION TO STRIKE ALLEGATIONS 2 3 PLEASE TAKE NOTICE that on July 18, 2018 at 2:00 p.m. before the Honorable William H. Orrick in Courtroom #2 on 17<sup>th</sup> floor of the above-entitled Court, RABAB 4 5 ABDULHADI ("Dr. Abdulhadi") will move pursuant to Rule 12(f) of the Federal Rules 6 of Civil Procedure to strike various allegations of the Plaintiffs' Second Amended 7 Complaint ("SAC") filed on June 19, 2017. 8 Dr. Abdulhadi respectfully moves the Court to strike the following portions of the 9 Plaintiffs' Complaint pursuant to Rule 12(f): 10 (1) Paragraph 33 of Plaintiffs' Complaint whereby the Plaintiffs provide the Court 11 with a distorted version of the U.S. State Department's definition of Anti-12 Semitism. 13 This Motion is based upon the Memorandum of Points and Authorities included 14 herein, the existing record in this matter, and any such additional authority and argument 15 as may be requested in Abdulhadi's reply and at the hearing on this Motion. 16 DATED: April 30, 2018 RESPECTFULLY SUBMITTED 17 18 LAW OFFICE OF MARK ALLEN KLEIMAN 19 20 By: /s/ Mark Allen Kleiman 21 Mark Allen Kleiman, Esq. 22 LAW OFFICES OF BEN GHARAGOZLI 23 Ben Gharagozli, Esq. 24 GAVIN, CUNNINGHAM & HUNTER 25 Alan F. Hunter, Esq. Elizabeth Gong Landess, Esq. 26 27 Attorneys for Dr. Abdulhadi 28 NOTICE OF MOTION AND MOTION TO STRIKE ALLEGATIONS

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#### MEMORANDUM OF POINTS AND AUTHORITIES

#### I) <u>INTRODUCTION</u>

In a 51-page SAC, Plaintiffs demand legal and equitable relief for purported civil rights violations without addressing the many deficiencies that the Court identified in the Plaintiff's First Amended Complaint.

Plaintiffs' SAC intentionally distorts the U.S. Department of State's definition of anti-Semitism for a third time. This is a distortion at best and a misrepresentation at worse. While the previous instances may have been inadvertent, it is difficult to believe that the present distortion was not intentional.

#### II) ARGUMENT

Federal Rule of Civil Procedure (FRCP) 12(f) provides in pertinent part that a "court may strike from a pleading ...any redundant, immaterial, impertinent, or scandalous matter" either on its own motion or upon motion by a party. The function of a 12(f) motion is "to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010).

# A) The Court Should Strike Plaintiffs Distortion of the Department of State's Definition of Anti-Semitism.

Paragraph 33 of the Plaintiffs' Complaint urges the Court to adopt what Plaintiffs claim to be the U.S. State Department's definition of Anti-Semitism. The definition is immaterial and impertinent for the pleading stage as there is no legal authority indicating that the State Department's definition is binding upon this Court. What is more, paragraph 33 is a self-serving distortion of the Department of State's definition.

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Specifically, Plaintiffs misstate the examples of Anti-Semitism that the Department of State definition provides:

The first example Plaintiffs provide from the Department of State definition states: "Calling for, aiding, or justifying the killing or harming of Jews (often in the name of a radical ideology or an extremist view of religion."

However, the Department of State's example actually states this example as follows:

"Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion."

The distortion is material because whereas the Plaintiffs' version indicates that this is <u>often</u> in the name of a radical ideology or an extremist view of religion, the language from the Department of State website categorically requires that the enumerated actions be in the name of a radical ideology or an extremist view of religion. Accordingly, Plaintiffs seek to broaden this example to include more than what the Department of State definition envisioned.

The second example that Plaintiffs distort states:

"Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, the state of Israel, or even for acts committed by non-Jews."

However, the Department of State's example actually states this example as follows:

"Accusing Jews as a people for being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews."

The distortion is material because while the Department of State's example is limited to Jews, Plaintiffs broaden the example to the state of Israel. Interestingly, Plaintiff's attempt to equate Zionism and Jewishness is one of the central and inherent flaws of Plaintiff's lawsuit as a whole.

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In short, Plaintiffs urge the Court to adopt a non-binding definition of anti-Semitism and then distort that very definition by misrepresenting (in a self-serving manner) the examples that the definition provides.

B) The State Department Definition is Too Ephemeral to be Relied Upon.

In the four months between the hearing on Plaintiffs' First Amended Complaint and the filing of their latest effort, the State Department definition has changed in significant ways. Plaintiffs, who earlier urged this Court to accept the earlier version as definitive, now urge the Court to embrace the newer version. Nothing could better illustrate the perils of relying on government administrative agencies to determine matters directly affecting constitutional doctrine. This alteration, by itself, shows why the Court should form its own conclusions.

#### III) CONCLUSION

Plaintiffs have materially misstated the Department of State's definition of anti-Semitism for the third time. The misstatement on an issue as fraught with controversy as this one ought not remain in the records and should be stricken.

DATED: April 30, 2018 RESPECTFULLY SUBMITTED

LAW OFFICE OF MARK ALLEN KLEIMAN

By: /s/ Mark Allen Kleiman

Mark Allen Kleiman, Esq.

LAW OFFICES OF BEN GHARAGOZLI Ben Gharagozli, Esq.

GAVIN, CUNNINGHAM & HUNTER

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Attorneys for Dr. Abdulhadi

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